Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1995

JAMES A. HINCHLIFFE
AND
YONG SUN HINCHLIFFE *Petitioner(s)*

v.

TRANSAMERICA FINANCIAL CONSUMER DISCOUNT CO.

On Petition For Writ Of Certiorari
To The UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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ZOPP

QUESTION(S) PRESENTED

1. When important federal questions are unanswered by both the United States court of appeals and the state court; do these matters call for an exercise of the United States Supreme Court's supervisory power?

2. Can a state court decide an important federal question that conflicts with á United States court of appeals, and can a United States court of appeals depart from the accepted and usual course of judicial proceedings, or sanction such a departure by a lower court?

3. Can a United States court of appeals loose jurisdiction over a matter to a lower court?

LIST OF PARTIES

In accordance with United States Supreme Court Rule 14.1(b), the names of all parties in this case appear in the caption of the judgment order of the Court of Appeals on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The November 20, 1995, Memorandum Opinion/ Judgment of the United States Court of Appeals for the Third Circuit appears at (Appendix A) to the petition. The Order of the United States District Court dated February 6, 1995, and entered on February 7, 1995, appears at (Appendix B) to the petition. The December 20, 1995, Sur Petition For Rehearing of the United States Court of Appeals for the Third Circuit appears at (Appendix C) to the petition.

JURISDICTION

The Memorandum Opinion/Judgment of the United States Court of Appeals for the Third Circuit is dated November 20, 1995, and appears at (Appendix A) to the petition. A timely petition for rehearing en banc was denied by Sur Petition For Rehearing dated December 20, 1995, and appears at (Appendix C) to this petition. This petition is filed within 90 days of the entry of the Sur Petition For Rehearing. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The Court in its Memorandum Opinion/Judgment dated and filed on November 20, 1995, has clearly overlooked and misapprehended important facts in this case, and or cases.

The case of James A. Hinchliffe and Yong Sun Hinchliffe vs. Transamerica Financial Consumer Discount Co., does not, as the Court has assumed, warrant the adverse effect of its judgment.

In the Court assuming issues in its Memorandum Opinion, it has erred from the truth.

The Court, in its Memorandum Opinion/Judgment has worked adversely and against the appellants, James A. Hinchliffe and Yong Sun Hinchliffe, in not seeking inquiry and or investigation of the facts and issues in this matter, yet has assumed.

This proceeding involves some questions of exceptional importance and inclusive of actions of the United States District Court.

Other crucial issues must be addressed and now in the Supreme Court of the United States, of which has jurisdiction over these matters, from the United States Court of Appeals for the Third Circuit as well as from the lower Courts and including the state Court matter; C.R. 237, 237.1, inter alia, etc..

Petitioner's, debtor's right of recoupment and set-off must be and will be adjudicated by the

Court.

Petitioners, debtors James A. Hinchliffe and Yong Sun Hinchliffe, now express a belief, based on a reasoned and studied judgment, that the United States Court of Appeals for the Third Circuit's decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that this appeal involves questions of exceptional importance.

By the United States Court of Appeals for the Third Circuit having erred in this case, has caused harm to the appellate procedure and therefore has harmed the general public.

The actions, or lack of, taken by the Court has served no useful, nor has it served any beneficial purpose to the Court, the petitioners or to the general public, and this matter is of imperative public importance.

REASONS FOR GRANTING THE PETITION

By use of the United States Supreme Court's supervisory power, important federal questions will be answered that both the United States court of appeals and the state court failed to or were unable to answer.

If possible for a United States court of appeals to loose jurisdiction over a matter to a lower court action, perhaps and in fact the Supreme Court of the United States has or gains a full jurisdiction over such matter.

The lower Court's loss of control in this matter became an adversity to the appellants and also due to the lapse in time the appellants were prevented from once again gaining control, and if a precedent is made, becomes of a national importance.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition and should issue a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-1200

IN RE:

JAMES A. HINCHLIFFE AND YONG SUN HINCHLIFFE,
Debtors

JAMES A. HINCHLIFFE; YONG SUN HINCHLIFFE,
Appellants

v.

TRANSAMERICA FINANCIAL CONSUMER DISCOUNT CO.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. Civil No. 92-04679)
District Judge: Hon. Louis H. Pollak

Submitted Under Third Circuit LAR 34.1(a)
on October 30, 1995

Before:
NYGAARD, ALITO and SAROKIN, Circuit Judges
(Opinion Filed: November 20, 1995)

MEMORANDUM OPINION

NYGAARD, Circuit Judge

Appellants, James A. Hinchliffe and Yong Sun Hinchliffe filed a petition under Chapter 11 of the Bankruptcy Code. Transamerica Financial Consumer Discount Company then filed a motion for relief from the automatic stay under 11 U.S.C. § 362. Four months later, debtors filed an adversary proceeding in the bankruptcy court, No. 91-2256, against Transamerica and Transamerica's district manager seeking monetary damages from Transamerica for refusing to continue to make advances under the loan agreement between appellants and Transamerica after appellants' default.

Transamerica filed two seperate motions to dismiss, or to convert the debtors' case from a Chapter 11 to a Chapter 7 liquidation. After three hearings on the motion for relief and the motion to convert, the bankruptcy court granted Transamerica relief from the automatic stay and converted the debtors' case to a Chapter 7 liquidation. The order allowed Transamerica to enforce its interest as mortgagee in three properties owned by the debtors, and in certain escrow funds.

The debtors appealed this order to the district court, which remanded the matter to the bankruptcy court for it to make findings of fact and conclusions of law to support its order. On remand, the bankruptcy court issued extensive findings of fact and conclusions of law to support its new order, and granted the same relief it had earlier granted.

Soon thereafter, debtors filed a pro se appeal from the latest bankruptcy court's order. In their second appeal, the debtors filed a Designation of Record and Statement of Issues Presented on Appeal. The Statement, however, did not identify any issues presented by the second appeal. Nonetheless, because of the confusion created by the two appeals,

and because the issues may have been identical, the appeals were consolidated and heard together by the district court.

The district court affirmed the order of the bankruptcy court converting the debtors' bankruptcy case from a Chapter 11 to a Chapter 7, and granting Transamerica relief from the automatic stay. Debtors filed a pro se notice of appeal from this order. The debtors' informal brief expressly presents essentially one issue, and that is, whether "the district court should have remanded to the bankruptcy court to develop[] a record covering the merits of the adversary proceeding against Transamerica."

There are several obvious problems with this. First and foremost, the adversary proceeding has not been litigated in the bankruptcy court, and neither the district court nor we have appellate jurisdiction to review the merits of the adversary proceeding. As a broader explanation, after filing the adversary proceeding, debtors have failed to pursue it or respond to Transamerica's discovery requests with respect to the issues presented in the adversary proceeding. Significantly, there has been no hearing in the adversary proceeding; there has been no final order issued thereon; so appellants have presented no issue relating to the adversary proceeding that we can review on appeal. Transamerica states that the single issue expressly raised by the debtors "also presents, by implication, the broader issue of whether the District Court erred, based upon the Bankruptcy Court's Findings of Fact and Conclusions of Law and the records presented below, in affirming the June 26, 1992 Order of the Bankruptcy Court converting the debtors' bankruptcy case to Chapter 7 and granting Transamerica relief from the automatic stay."

Assuming that these additional issues are properly before us, however, we hold that the district court did not err.

Accordingly, we will affirm the order of the district court.

TO THE CLERK:

Please file the foregoing memorandum opinion.

/s/ R. Nygaard
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-1200

IN RE:

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Debtors

JAMES A. HINCHLIFFE; YONG SUN HINCHLIFFE,
Appellants

v.

TRANSAMERICA FINANCIAL CONSUMER DISCOUNT CO.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. Civil No. 92-04679)
District Judge: Hon. Louis H. Pollak

Before:
NYGAARD, ALITO and SAROKIN, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submit-

under Third Circuit LAR 34.1(a) on October 30, 1995.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the district court entered February 7, 1995 be, and the same is hereby affirmed.

Costs taxed against appellants.

ATTEST:

/s/ P. Douglas Sisk
Clerk

DATED: November 20, 1995

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	
	:	
JAMES A. HINCHLIFFE	:	Civil Action No.
YONG SUN HINCHLIFFE	:	92-4679
Debtors/Appellants	:	

O R D E R

Debtors James A. Hinchliffe appealed from the June 26, 1992, order of the bankruptcy court that converted their proceeding from Chapter 11 to Chapter 7 and which gave Transamerica Financial Consumer Discount Co. relief from the automatic stay under 11 U.S.C. § 362. In January 1994, I remanded the case to the bankruptcy court so that a statement of the court's findings of fact and conclusions of law could be generated. The Honorable Thomas M. Twardowski issued his opinion in this matter on February 25, 1994, and the parties filed supplemental briefs with this court in July and August 1994.

Upon review of Judge Twardowski's careful opinion of February 25, 1994, and of the supplemental briefs filed by the parties, it is hereby ORDERED that Judge Twardowski's order of June 26, 1992, is AFFIRMED.

February 6, 1995 /s/ Louis H. Pollak
Pollak, J.

ENTERED: 2/7/95

CLERK OF COURT

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-1200

IN RE:

JAMES A. HINCHLIFFE AND YONG SUN HINCHLIFFE,
Debtors

JAMES A. HINCHLIFFE; YONG SUN HINCHLIFFE,
Appellants

v.

TRANSAMERICA FINANCIAL CONSUMER DISCOUNT CO.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. Civil No. 92-04679)
District Judge: Hon. Louis H. Pollak

PRESENT:

SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, McKEE and SAROKIN, Circuit Judges

The petition for rehearing filed by appellants in the above captioned matter having been

submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ R. Nygaard
Circuit Judge

Dated: December 20, 1995